

7-2500-4054-2
E-118,329/SA-89-448

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the City of
Willmar's Request to Determine
Appropriate Compensation to be
Paid to Kandiyohi Cooperative
Electric Power Association
under Minn. Stat. 216B.44
(Nelson International)

PREHEARING ORDER

The above-entitled matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis at 9:30 a.m. on October 2, 1989 in the Large Hearing Room of the Public Utilities Commission, Seventh Floor, American Center Building, St. Paul, Minnesota.

Appearances: Byron E. Starns and Susan M. Robiner, Leonard, Street & Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, Minnesota 55402, on behalf of the Willmar Municipal Utilities Commission; Harold LeVander, Jr., Maun, Hayes, Simon, Johanneson, Brehl & Odlaug, 2300 World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101, on behalf of the Kandiyohi Cooperative Electric Power Association; Jocelyn F. Olson, Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, on behalf of the Minnesota Department of Public Service (DPS); and Janet Gonzalez, Rate Analyst, Minnesota Public Utilities Commission, 780 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, on behalf of the Commission Staff.

Discussion was held among the participants who took part in the Prehearing Conference, and having considered all the arguments and comments, as well as written submissions filed by the participants, the Administrative Law Judge makes the following Prehearing Order:

INTERVENORS

1. Based upon its Petition to Intervene in the proceeding, the Minnesota Department of Public Service is made a party to this case as an Intervenor.

2. The final date for intervention is November 13, 1989.

Any person allowed to intervene in this proceeding after the date of this Order shall be bound by the terms of this Order.

SCHEDULE

The following Schedule is adopted and, except when modified by Order of the Administrative Law Judge, shall govern this proceeding:

3. Intervention deadline - November 13, 1989.
4. Parties file direct testimony - December 18, 1989 (mailing date).
5. Rebuttal testimony filed - January 10, 1990 (mailing date).
6. Surrebuttal testimony filed - January 23, 1990 (mailing date).
7. Evidentiary hearings -- January 29, 30 and 31, 1990, 9:30 a.m., Large Hearing Room, Seventh Floor, American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota.
8. A public hearing to receive the testimony of the interested public shall be held as follows: Thursday, January 25, 1990, 7:00 p.m., Willmar City Office Building (Conference Room 3), 333 Southwest Sixth Street, Willmar, Minnesota. The Administrative Law Judge will conduct a view of the annexed territory at 4:00 p.m. on the afternoon of January 25, 1990. Notice of the public hearing shall be printed in the Legal Notices section of the West Central Tribune, a newspaper of general circulation in Willmar and Kandiyohi County, on two occasions, the first during the week of January 8-12, 1990 and the second on or after January 15, 1990 and no later than January 23, 1990.
9. The parties shall submit Briefs and are encouraged to submit proposed Findings of Fact and Conclusions, all appropriately referenced to the official record, at such times after the close of the evidentiary hearings as shall be directed by the Administrative Law Judge.

PROCEDURE

10. The Rules of the Office of Administrative Hearings shall govern the conduct of the hearing herein.

FILING OF DOCUMENTS

11. All direct testimony sponsored by all parties shall be

filed in writing with the Administrative Law Judge and shall be received by the parties in accordance with the schedule herein. All prefiled testimony shall be in question and answer format.

12. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. Prior to the issuance of the Report of the Administrative Law Judge, the original document and one copy shall be delivered or mailed to:

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Richard C. Luis
Administrative Law Judge
Office of Administrative Hearings
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415

b. Nine (9) copies shall be filed with the Commission Secretary for distribution among Commissioners and Commission staff. The copies shall be delivered or mailed to:

Lee Larson
Acting Executive Secretary
Minnesota Public Utilities Commission
Seventh Floor, American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

c. Except as hereinafter provided, one (1) copy shall be served personally or by mail on the attorney of record for each party, or, if there is no attorney, upon the party.

d. One (1) copy of each such document shall be served personally or by mail on Jodi Taitt as follows:

Jodi Taitt
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

e. Two (2) copies of each such document shall be served personally or by mail on Linda Chavez as follows:

Linda Chavez
Minnesota Department of Public Service
790 American Center Building

160 East Kellogg Boulevard
St. Paul, Minnesota 55101

f. A service list is attached hereto as Exhibit A and made a part hereof. Service of documents in the numbers required by this Order shall be made according to such service list.

g. Following the Report of the Administrative Law Judge, original documents shall be filed with the Secretary of the Commission. A copy may be filed with the Office of Administrative Hearings.

h. Pursuant to Minnesota Rules, part 1400.5100, sub. 9 (1985), the effective date of filing shall be the date the document is mailed or delivered to the Administrative Law Judge or to the Secretary of the Commission.

i. Proof of service shall be filed with each filed document.

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13. One copy of any document or information filed with or supplied to the Public Utilities Commission or the Commission staff relative to any issue in these proceedings which is not otherwise served on the parties or their attorneys pursuant to Paragraph 13 hereof shall be served on the attorney of record for each party, or, if there is no attorney, upon the party.

DISCOVERY

14. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within ten (10) days from the date of the request. The information need not be supplied as a matter of course to all other parties. In the event the information cannot be supplied within such ten-day period, the responding party shall notify the requesting party, in writing, within five days of the request to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon Motion of a party.

15. Further discovery may be had herein in accordance with Minnesota Rules, parts 1400.6700 - 1400-6900 (1985).

PREFILED TESTIMONY

16. Prefiled direct, rebuttal and surrebuttal testimony shall not be bound into the record but shall be received as an exhibit to the record. Prefiled testimony not offered into the record

shall be considered withdrawn and the witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties no later than five days prior to commencement of the evidentiary hearing.

Any new affirmative matter that is not offered in reply to another party's direct case shall not be allowed in rebuttal testimony and exhibits. Similarly, surrebuttal testimony and exhibits are limited to a reply to rebuttal testimony and new affirmative matter will not be accepted; provided, however, the parties may raise in rebuttal or surrebuttal testimony affirmative matters with respect to any new issues not already part of the parties' direct case resulting from statements made at the public hearing held herein. New issues that arise on cross-examination during the course of the evidentiary hearing are not covered by this paragraph.

ORDER OF TESTIMONY

17. Testimony in the evidentiary hearing shall be offered in the following order: Willmar Municipal Utilities Commission, Kandiyohi Cooperative Electric Power Association, Department of Public Service, and any other Intervenors in the order of their intervention. Cross-examination of the witnesses shall be conducted by the parties in the same order; provided, however, that parties shall not cross-examine their own witnesses.

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18. No later than five days prior to the commencement of the evidentiary hearing herein, each party shall submit to the Administrative Law Judge, the Commission and the other parties, a list of that party's witnesses and the order in which those witnesses will appear, indicating, if necessary, any day certain for testimony known to the party calling the witness. The final order of testimony will be as established by the Administrative Law Judge.

19. At the public hearing members of the public shall be permitted to question the current parties and any other Intervenors present. The parties and other Intervenors are expected to respond to the public's questions. Statements made by members of the public may be considered substantive evidence in the discretion of the Administrative Law Judge.

EXAMINATION OF WITNESSES

20. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

21. Except for cause shown, objections by any party relating

to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties no later than five days prior to commencement of the evidentiary hearing. Any prefiled testimony which is not objected to shall be admitted during the evidentiary hearings without the necessity of laying a foundation for the testimony.

If an objection and the grounds thereof become known only during the course of cross-examination and reasonable discovery would not have resulted in the disclosure of information supporting said objection, the Administrative Law Judge, in the interests of justice, may herein rule upon the objection. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness.

MISCELLANEOUS

22. A final prehearing conference may be held on a date determined by the Administrative Law Judge. The purpose of this prehearing conference would be to mark exhibits to be offered at the hearing, including exhibits to be offered upon cross-examination, and portions of depositions to be introduced into the record. In the unusual case where the attorney for a party believes that an exhibit should not be disclosed to the opposing parties prior to oral examination, he or she may present a copy of the exhibit to the Administrative Law Judge with a brief memorandum of explanation in support and circulate copies of the exhibit to the other parties at the time of cross-examination.

23. Parties are encouraged to stipulate evidence not in dispute and to narrow the scope of contested issues to the matters actually in dispute. All stipulations will be subject to public testimony to be received, acceptance by the Administrative Law Judge, and review by the Commission, which shall include the opportunity for the Commission or its staff to examine any witness on the record irrespective of the existence of a stipulation between the parties with respect to such testimony.

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24. This Order is effective immediately and may be modified by the Administrative Law Judge for cause.

Dated this day of November, 1989.

RICHARD C. LUIS
Administrative Law Judge

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EXHIBIT A

Richard C. Luis (original and one copy)
Administrative Law Judge
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415

Lee Larson (nine copies)
Acting Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Jodi Taitt (one copy)
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Linda Chavez (two copies)
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Byron E. Starns (one copy)
Susan M. Robiner (one copy)
Leonard, Street & Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

Harold LeVander, Jr. (one copy)
Maun, Hayes, Simon, Johanneson, Brehl & Odlaug
2300 World Trade Center
30 East Seventh Street
St. Paul, MN 55101

Jocelyn F. Olson (one copy)
Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, MN 55101

November 1, 1989

ALL PARTIES AND COUNSEL OF RECORD

Re: In the Matter of the City of Willmar's Request to
Determine Appropriate Compensation to be Paid to Kandiyohi
Cooperative Electric Power Association under Minn. Stat.
216B.44 (Nelson International); OAH Docket No.
7-2500-4054-2; PUC Docket No. E-118,329/SA-89-448

Dear Parties and Counsel:

Enclosed and served upon you by mail, please find Prehearing
Order of the Administrative Law Judge in the above-entitled
matter.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/349-2542

RCL:lr

Enclosure

Service List

Lee Larson
Acting Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Jodi Taitt
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
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